REMARKS

This amendment is responsive to the *Final* Office Action of March 9, 2009. Reconsideration and allowance of claims 2, 4, 6-14, 16, 17, and 19-25 are requested.

The Office Action

Claims 3-13, 16, and 18-22 stand rejected under 35 U.S.C. § 102 over Mortara (US 5,704,351).

Claims 2, 14, and 17 stand rejected under 35 U.S.C. § 103 over Mortara in view of Schwarzberg (US 5,730,143).

Claims and 21 stand rejected under 35 U.S.C. § 112, second paragraph.

35 U.S.C. § 112

Claims 13-21 have been amended to address the 35 U.S.C. § 112 issues raised by the Examiner. Regardless whether this Amendment is entered or not, the applicant would appreciate the Examiner indicating that the amendments to claims 13 and 21 would cure the 35 U.S.C. § 112 rejection.

No Claims Are Anticipated By Mortara

In the Examiner's Response to Arguments, the Examiner asserts that measuring the impedance of each electrode connection is "equivalent to" a quality of the measuring signal. The standard for anticipation requires identity. Any claim which is not completely shown by a prior art reference must be rejected under 35 U.S.C. § 103 with an explanation, typically in the form of a teaching reference, why the differences are equivalent. Because Mortara does not disclose all claimed elements, it is submitted that a § 102 rejection will not properly lie.

Measuring impedance of an electrode is not the equivalent to a quality of the measuring signals generated by a sensor. First, even when the electrode impedance is considered satisfactory, the measuring signals can still have a low or unacceptable quality. Poor quality in the measuring signals can come from many factors, not just electrode impedance. Conversely, even when the electrode impedance is high, acceptable quality measuring signals may be obtained.

The Claims Are Not Anticipated By And Distinguish Patentably Over the References of Record

As explained in column 5, lines 9-46 of Mortara, the impedance of an EKG electrode is checked by disabling the electrode (lines 22-23) and then during an electrode check, measuring impedance across the electrode. As explained in greater detail in claim 28 and more particularly claim 27 from which it depends, while the electrode to be tested is disabled, a current is applied to measure its impedance. This current is applied for test purposes only and is not patient generated data and is not indicative of patient physiology.

Claim 11 has been amended to clarify that the quality is determined by evaluating the physiological data measurement signals. By contrast, Mortara determines electrode impedance by applying a test signal when the tested electrode is not generating physiological data measurement signals. Accordingly, claim 11 and claims 2, 4, 6-10, 12, and 23-25 are not anticipated by Mortara.

Schwarzberg was not cited as and does not cure this shortcoming of Mortara. Accordingly, these claims further distinguish patentably and unobviously over the references of record.

Claim 8 calls for the quality, as defined in claim 11, to be signaled in response to a substantial change in the quality. First, as discussed above, measuring the impedance across the electrode is not the quality as defined in claim 11. Second, even if the measured impedance could be interpreted as the quality, Mortara signals that the impedance is below acceptable levels in response to the impedance being below the acceptable level, not in response to a change in the impedance.

Claim 10 calls for signaling the quality in response to the quality of the physiological data measurement signal which is indicative of the physiological data to be communicated wirelessly falling below a predetermined level. By contrast, Mortara must apply a separate test signal to determine contact impedance.

Claim 23 calls for the mobile measuring apparatus to concurrently communicate physiological data and evaluate the physiological data measurement signals. By contrast, Mortara must stop the generation of EKG signals to measure electrode impedance.

Claim 24 calls for evaluating a form of the physiological data measurement signal. By contrast, Mortara evaluates a test current to determine contact impedance.

Claim 25 calls for a plurality of sensors which generate a plurality of physiological data measurement signals and wherein the mobile measuring apparatus evaluates an interference level between these signals. Again, Mortara evaluates a test current to measure EKG resistance and has no suggestion of evaluating interference among physiological data measurement signals.

For the above enumerated reasons and others, it is submitted that the dependent claims distinguish yet more forcefully over Mortara and the other references of record.

Claim 13 has been amended to clarify that the measuring apparatus receives the physiological patient data signals from one or more sensors and evaluates the measured physiological patient data to determine a quality of the physiological patient data. By contrast, Mortara measures a test current to determine EKG electrode impedance. Because claim 13 calls for the quality to be determined based on the measured physiological patient data; whereas, Mortara determines electrode resistance based on a test current, it is submitted that claim 13 and claims 14 and 22 dependent therefrom are not anticipated by Mortara.

Claim 22 further specifies that the valuation is based on one of transmission level, interference level, and form of the physiological patient data signals. By contrast, Mortara evaluates test signals.

For the reasons set forth above and others, it is submitted that the claims which depend from claim 13 distinguish yet more forcefully over the references of record.

Claim 16 calls for determining the quality of the measured medical data from the measured medical data. As clearly shown in claims 28 and 27 and column 5, lines 9-46 of Mortara, Mortara does not determine the electrode impedance from measured EKG data. Rather, Mortara determines the EKG electrode impedance from a test current applied when the EKG electrode is not generating medical data. Accordingly, claim 16 and claims 17, 19, 20, and 21 dependent therefrom are not anticipated by and are patentable over Mortara.

The Present Amendment Should Be Entered

First, it is submitted that the present amendment resolves the 35 U.S.C. § 103 issues.

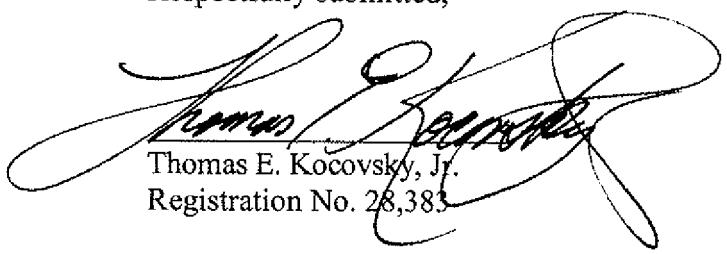
Second, from the March 9, 2009 Office Action, it is believed that the Examiner fully understands the difference between the Mortara reference and the present application. It appears that the issue remaining is whether the claims and the Mortara reference can both be read so broadly that the two intersect. The present amendment makes minor revisions to the claims so that these two clearly and unambiguously do not intersect. That is, it is believed that the Examiner has fully searched the concepts set forth in this application and that this amendment creates a sufficient differentiation between the claims and the Mortara reference that even the Examiner will concur that these claims are now in condition for allowance. Accordingly, it is submitted that the present amendment should be entered as placing the application in condition for allowance.

CONCLUSION

For the reasons set forth above, it is submitted that no claims are anticipated by Mortara and that all claims distinguish patentably and unobviously over the references of record. An early allowance of all claims is requested.

In the event the Examiner considers personal contact advantageous to the disposition of this case, the Examiner is requested to telephone Thomas Kocovsky at 216.363.9000.

Respectfully submitted,



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